

**HIGH COURT OF TRIPURA  
AGARTALA**

**A.B. No. 58 of 2021**

**Sri Bishu Kumar Tripura**

----- Petitioner(s)

Versus

**The State of Tripura**

-----Respondent(s)

For Petitioner(s) : Mr. J. Bhattacharjee, Advocate.

For Respondent(s) : Mr. R. Datta, Public Prosecutor.

**B\_E\_F\_O\_R\_E\_  
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY  
ORDER**

**20/08/2021**

This application under section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C hereunder) has been filed for granting pre arrest bail to accused Bishu Kumar Tripura who has been apprehending arrest in Bishalgarh PS case No. 2021/BLG/059 registered for offence punishable under Sections 20(b)(ii)(C), 25, 27A, 29 and 32 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act hereunder).

**[2]** Factual background of the case is as under:

Sri Parthanath Bhowmik, Inspector of Police of Bishalgarh police station lodged suo motu written FIR with the Officer in Charge of Bishalgarh police station alleging, inter alia, that on 24.07.2021 he received an information from police source that a truck bearing registration No. TN47-AT 4858 (Ashok Leyland Truck) was coming towards Bishalgarh from Udaipur and the said vehicle was carrying dried ganja. Sri Bhowmik recorded the said information in the general diary of the police station vide GD entry No. 8 dated 24.07.2021 and procured permission from the jurisdictional Superintendent of Police to step into action. He along with required number of Officers and Staff left the police station vide GD entry No. 10 dated 24.07.2021 and started noticing the vehicles which were coming from the said direction. The suspected vehicle arrived in front of Bishalgarh police station at 05.45 am and the same was detained by the police team. Driver Selvaraj K of Tamil Nadu told the police team that the vehicle was carrying rubber sheet. When police undertook a search in the said vehicle, the driver tried to flee away. He was however, detained and brought to police station for interrogation. With the help of interpreter, police interrogated him for about three hours and came to know that during the previous night rubber sheet was loaded in his vehicle from a place called Madhab bari at Jirania. Thereafter, he was taken to a place between Tepania and Killa in Gomati Tripura for loading dried ganja where he noticed huge quantity of dried ganja stored in a place and he

learnt from the conversation of the people that present accused Bishu Kumar Tripura was the owner of the said contraband. It is stated in the FIR that 3390 Kg dried ganja wrapped in rubber sheets was recovered from the said vehicle and the same was seized in presence of witnesses. But, it is not clear from the FIR exactly where the vehicle was searched and the contraband was recovered and seized by police. However, on the basis of the said information lodged by Inspector Parthanath Bhowmik, Bishalgarh PS case No. 2021/BLG/059 under the said charges was registered and investigation of the case was taken up.

**[3]** Apprehending arrest in the case, accused petitioner has moved this court by means of filing this petition under section 438, Cr.P.C. seeking pre arrest bail.

**[4]** Heard Mr. J. Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. R. Datta, learned P.P representing the State respondent.

**[5]** Counsel appearing for the petitioner contends that there is no material at all to justify the arrest and detention of the accused in connection with the present case. Therefore, it is necessary to protect him from unwarranted arrest to safeguard his liberty guaranteed under the Constitution. Counsel submits that except the statement of the accused driver that he heard the name of the present petitioner

from the conversation of someone, there is no other material against him. Relying on the decision of the Apex Court in **Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in **(2018) 8 SCC 271** counsel argues that in absence of any substantive evidence no conviction purely on the basis of the statement of the co-accused can survive. Observation of the Apex Court of the said judgment is as under:

**"14. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges levelled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence."**

[6] It is also contended by Mr. Bhattacharjee, learned counsel that on the date of occurrence the accused was not at all present in the State. Counsel submits that the certificate issued from the Gauhati Medical College & Hospital (Annexure-2 to the petition) would show that accused had undergone COVID-19 screening in Gauhati Medical College & Hospital on 22.07.2021. Therefore, in no circumstances he was present at the alleged place where the contraband was allegedly loaded in the offending vehicle. Counsel has also relied on another clinical document of the same date issued from Gauhati Medical College & Hospital whereby several medicines were

prescribed for the treatment of the accused. It is further contended by Mr. Bhattacharjee, learned counsel that in the past also accused was implicated in two other cases for similar charges. In one of those cases, the investigating agency could not even file charge sheet against him and in the other case he was released on bail immediately after his arrest. Since no material except the statement of the accused driver could be produced against him, Mr. Bhattacharjee, learned counsel urges the court to protect the petitioner from unwarranted arrest by granting pre arrest bail to him.

**[7]** Mr. R. Datta, learned P.P robustly opposes the bail application. Learned P.P has referred to the various documents available in the case diary with regard to the involvement of the accused in the present case. According to Mr. Datta, learned P.P the clinical documents produced by the petitioner are absolutely fake documents because the CDR collected by police during the investigation of the case would reveal that the accused was very much present at Bishalgarh from where he was controlling the movements of the offending vehicle loaded with the contraband and conveying required instructions over telephone to the accused driver and his other associates. It is contended by Mr. Datta, learned P.P that the material collected by the investigating agency would reveal that the petitioner left Bishalgarh for Guwahati soon after the said vehicle was detained by police at Bishalgarh. During such

investigation it also transpired to the investigating agency that other than the accused driver of the vehicle and the present petitioner, two other persons namely Tapas Debanth and Bikash Roy were also involved in the offence and on the basis of the materials collected by the investigating agency, said Tapas Debnath was arrested. Accused Bikash Roy is still absconding for whose arrest, the investigating agency has taken required initiative. It is submitted by Mr. Datta, learned P.P that the present petitioner has criminal antecedents who was involved in two other cases under similar charges. One of those cases is 2021 MANU 004 under sections 20(C) and 29(1) of the NDPS Act and the other case is Melaghar PS case No. 28 of 2020 under sections 20(b)(ii)(C) and 29, NDPS Act and sections 148, 149, 353, 325, 427 and 307, IPC and section 3 of the Prevention of Damage of Public Property Act, 1984. Relying on the decision of the Apex Court in ***P. Chidambaram Vs. Directorate of Enforcement*** reported in **(2019) 9 SCC 24** learned P.P submits that power conferred under section 438, Cr.P.C is an extra ordinary power which should be exercised sparingly in extra ordinary circumstances. According to learned P.P relief under section 438, Cr.P.C cannot be granted in this case. In this regard, the observation of the Apex Court is as under:

**"70. On behalf of the appellant, much arguments were advanced contending that anticipatory bail is a facet of Article 21 of the Constitution of India. It was contended that unless custodial interrogation is warranted, in the facts and circumstances of the**

case, denial of anticipatory bail would amount to denial of the right conferred upon the appellant under Article 21 of the Constitution of India.

71. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the Article i.e. "...except according to a procedure prescribed by law." In *State of M.P. and another v. Ram Kishna Balothia and another* (1995) 3 SCC 221, the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under:-

"7. ....We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed:

"We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised."

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In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. *Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21.*" [emphasis added]

**72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.**

**73. The learned Solicitor General has submitted that depending upon the facts of each case, it is for the investigating agency to confront the accused with the material, only when the accused is in custody. It was submitted that the statutory right under Section 19 of PMLA has an in-built safeguard against arbitrary exercise of power of arrest by the investigating officer. Submitting that custodial interrogation is a recognised mode of interrogation which is not only permissible but has been held to be more effective, the learned Solicitor General placed reliance upon State v. Anil Sharma (1997) 7 SCC 187; Sudhir v. State of Maharashtra (2016) 1 SCC 146; and Directorate of Enforcement v. Hassan Ali Khan (2011) 12 SCC 684.**

**74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to**

recovery of relevant information. In *State v. Anil Sharma* (1997) 7 SCC 187, the Supreme Court held as under:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* (2005) 4 SCC 303, it was held as under:-

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses

**and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process**

**of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."**

[8] Further contention of Mr. Datta, learned P.P is that unless the investigating agency gets the opportunity of his custodial interrogation, it would be difficult for the investigating agency to book all the associates of the crime and collect evidence against them. Learned P.P, therefore, urges the court for rejecting the bail application of the petitioner.

[9] It is well settled that bail stands at the crossroad of individual liberty of social security. In the FIR, which is the genesis of the prosecution case, except the statement of the accused driver that from the conversation of someone he heard the name of the petitioner to be the owner of the seized contraband, I find no other incriminating material against him. The materials placed on record on

behalf of the prosecution reveals that accused was not present at the time of seizure of the contraband. There is no other cogent material in support of his connection with the seized contraband.

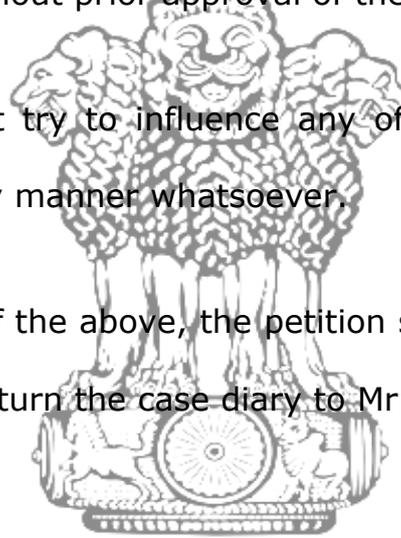
**[10]** I have considered the submissions of the counsel of the parties and perused the entire material available on record including the updated case diary. I have also taken into account the concern of the investigating agency as well as the right of accused to bail. It is true that section 37 of the NDPS Act puts some restrictions with regard to grant of bail to an accused charged with offence involving commercial quantity. But court is not powerless to grant bail in appropriate cases where if it appears to the court that there is no reasonable ground for believing that accused has been involved in the alleged offence.

**[11]** Having gone through the entire materials placed before this court and taking into consideration the submissions of the learned counsel representing the parties, this court is of the view that no prima facie case has been made out against the petitioner. Moreover, he has a permanent place of abode within the jurisdiction of court and chance of his fleeing away from his place of abode in the given circumstances is remote. Therefore, pre arrest bail as prayed for may be granted to the petitioner. Accordingly, it is ordered that in the event of his arrest the petitioner shall be released on bail on his

furnishing bail bond of Rs.40,000/- with two local sureties of the like amount to the satisfaction of the I.O on the following conditions:

- (i) He will appear at the police station before the investigating officer twice in a week till the completion of investigation.
- (ii) He will not leave the jurisdiction of the concerned police station without prior approval of the investigating officer.
- (iii) He will not try to influence any of the witnesses of this case in any manner whatsoever.

**[12]** In terms of the above, the petition stands allowed and the case is disposed of. Return the case diary to Mr. R. Datta, learned P.P.



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**JUDGE**